



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

JAN 06 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Freedom Performance, LLC
409 Cortez Road West
Groveland, FL 34736

Agent for Service of Process:
Geoffrey Kemper
409 Cortez Road West
Bradenton, FL 34207

Re: Notice of Violation of the Clean Air Act

Mr. Kemper:

The United States Environmental Protection Agency has investigated and continues to investigate Freedom Performance, LLC, ("Freedom Performance") for compliance with the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As summarized in this Notice of Violation, the EPA has determined that Freedom Performance sold parts or components for motor vehicle engines that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards. The EPA has also determined that Freedom Performance knew or should have known that these parts or components were offered for sale or installed for such use or put to such use. Therefore, Freedom Performance has violated Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This Notice of Violation arises under Part A of Title II of the Act, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the Act, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare."¹ Congress' purpose in creating the Act, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution."²

The EPA's allegations here concern parts or components for motor vehicles and engines subject to emission standards.³ The Act requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air

¹ CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

² CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).

³ See generally 40 C.F.R. Part 86, Subpart A (setting emission standards for these categories).

pollution, which may reasonably be anticipated to endanger public health or welfare.⁴ As required by the Act, the emission standards “reflect the greatest degree of emission reduction achievable through the application of [available] technology.”⁵ Motor vehicles and engines are subject to specific emission standards for each pollutant, based on a vehicle’s or engine’s class and model year.⁶

Vehicle and engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.”⁷ For example, manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen (“NO_x”). Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include diesel particulate filters (“DPFs”), exhaust gas recirculation (“EGR”), diesel oxidation catalysts (“DOC”) and selective catalytic reduction (“SCR”). Modern vehicles and engines are equipped with electronic control modules (“ECMs”). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

The Act makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”⁸ It is also a violation to cause any of the foregoing acts.⁹

To ensure that every new motor vehicle or engine legally sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States (collectively, “introduced into commerce”) satisfies applicable emission standards, the EPA runs a certification program. Under this program, the EPA issues certificates of conformity (“COCs”), thereby qualifying motor vehicles and engines for introduction into commerce.¹⁰ To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each model year in which it intends to manufacture or import motor vehicles or engines for introduction into commerce. The COC application must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices (“AECDs”) and the engine parameters they sense, as well as test results from a test vehicle or engine showing that it satisfies the applicable emission standards.¹¹ An AECD is “any element of design which senses temperature,

⁴ CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).

⁵ CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

⁶ See, e.g., heavy-duty diesel engine emission standards at 40 C.F.R. §§ 86.004-11, 86.007-11, 86.099-11 and light-duty vehicle emission standards at 40 C.F.R. § 86.1811-04. See also 40 C.F.R. §§ 86.090-8 (1990 and later model year light-duty vehicles); 86.094-9 (1994 and later model year light-duty trucks); 86.001-9 (2001 and later model year light-duty trucks); 86.004-9 (2004 and later model year light-duty trucks); 86.091-10 (1991 and later model year Otto-cycle heavy-duty engines and vehicles); 86.008-10 (2008 and later model year Otto-cycle heavy-duty engines and vehicles).

⁷ 40 C.F.R. § 86.094-2.

⁸ CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

⁹ CAA § 203(a), 42 U.S.C. § 7522(a).

¹⁰ 40 C.F.R. § 86.007-30.

¹¹ 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.096-21; see also EPA, *Advisory Circular Number 24-3: Implementation of Requirements Prohibiting Defeat Devices for On-Highway Heavy-Duty Engines* (Jan. 19, 2001).

vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.”¹²

Alleged Violations

Based on evidence gathered during an inspection on November 2, 2016, Freedom Performance offered for sale or sold from May 2015 to November 2016, software and hardware designed for use on motor vehicles or engines, primarily heavy-duty diesel trucks and engines, manufactured by entities such as Cummins Inc. (“Cummins”); FCA US LLC and its predecessors (“FCA”); General Motors Co. (“GM”); and Ford Motor Co. (“Ford”). This software and hardware could be used to disable the elements of design that motor vehicle manufacturers employ to meet emission standards. Freedom Performance sold three main categories of defeat device products: exhaust replacement pipes; EGR removal kits; and software tuners.

A principal effect of these products is to bypass, defeat, or render inoperative elements of the design that control emissions of regulated air pollutants. Freedom Performance sold products that rendered the original manufacturers’ software inoperative (insofar as the software received input from hardware used as emission control devices) and replaced it with software that allowed the vehicles or engines to function without inputs from emission control devices. Freedom Performance also sold hardware designed to replace emission control hardware. As stated above, emission control hardware (including EGR devices and exhaust aftertreatment devices) are elements of design that manufacturers employ to meet emission standards.

The Freedom Performance sales of software and hardware described above are identified in the table below:

PRODUCT	EFFECT ON EMISSION CONTROL DEVICES	QUANTITY
Tuners for several Ford, GM, and Dodge Cummins Diesel Trucks for Model Year 2003-Present Models	Override on-board diagnostic (“OBD”) codes to facilitate removal of DOC, DPF, EGR, and/or SCR systems.	6,133
Exhaust Replacement Pipes	Remove and bypass DOC, DPF, and/or SCR systems.	4,393
EGR Removal Kits	EGR removal and bypass	3,429
TOTAL		13,995

¹² 40 C.F.R. § 86.082-2.

Freedom Performance knew or should have known that these products were offered for sale or installed in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants.

The tuner products sold by Freedom Performance replace the original manufacturers' ECMs insofar as they override the on-board diagnostics to bypass, defeat, or render inoperative emission control devices by allowing the removal of elements of design without illuminating a Malfunction Indicator Lamp, prompting a Diagnostic Trouble Code, or causing an engine power reduction due to a missing or malfunctioning element of control. For example, an advertisement for one of Freedom Performance's tuner products, Punch-It 400C67 programmer (P/N: PIP67), indicated that the tuner disables EGR, DOC, DPF, and SCR (including Diesel Exhaust Fluid ("DEF") components) for 2011 through 2016 Model Year 6.7 liter diesel engines manufactured by Ford. The advertisement's statements described the tuner's emission control delete capabilities as follows:

Affordable Delete Tuning for Your 6.7L Powerstroke

- *Custom Race Tuner for Powerstroke 6.7L 2011-14*

Features

- *Custom Tuning Deletes DPF, DEF, CAT & EGR*
- *4 Power Levels up to +196 HP*
- *Clear Codes and Adjust Factory Parameters*
- *Monitoring Features*

...

If you would like to delete the emissions on your 6.7L Powerstroke (2011-2014), with power level options, and without a huge cost, the PIP67 is for you! This handheld tuner provides you with power levels up to an additional 196 horsepower, with street and towing levels in between. You have the option of deleting your Diesel Particulate Filter, DEF System, Catalytic Converter, and EGR on your 6.7L Ford Powerstroke. You can also adjust other parameters to customize the tuner to your truck as well as read / clear trouble codes. Increases your vehicles Horsepower, Torque, Throttle Response.

The exhaust replacement pipes and EGR removal kits sold by Freedom Performance physically replace emission control devices such as DPFs, DOCs, SCRs, and EGR systems. For example, an advertisement for one of Freedom Performance's products that includes a package of a tuner and exhaust and EGR replacement hardware, Reaper DPF, EGR Delete Package for Cummins 2007 .5-09 6.7L Pick-ups (P/N ReaperCummins67-x835NB-SD-EGRD-6.7C-x) stated:

Track Inspired Tuning, Delete Pipes & EGR Delete Kit

...

- *Punisher Performance Reaper Autocal with CSP5 Switch*

The Reaper Autocal allows you to safely and easily delete your DPF, EGR and CAT without throwing codes. 5 Tune-on-the-fly levels pre-installed on the Autocal module provide tuning to suit your needs. With the ability to clear codes and log data, this tuner ensures that you end up

with trouble free mods. Tunes can be added to the module via download should you further modify your truck.

...

- *The Flo-Pro CAT & DPF Delete Pipes*

Features:

- *Replaces CAT & DPF with high performance 4" delete pipes.*
 - *Will directly bolt up to factory exhaust system.*
 - *Does not include bungs to reinsert sensors. **Most tuners do not require sensors to be plugged back in to exhaust.***
 - *Fits 2007-12 Dodge Ram 2500/3500 Trucks with the 6.7L Cummins Engine.*
- *Sinister EGR Delete Kit*

Sinister Diesel's EGR Delete Kit for your Dodge truck's Cummins 2007 .5-09 trucks! This EGR delete has been engineered with a tough billet cover plate for increased durability. Using this EGR Delete kit eliminates exhaust recirculating through your intake manifold for increased reliability and engine longevity.

Sinister Diesel 2007 .5-09 Dodge Cummins 6.7L EGR Delete Kit.

- *6.7 Cummins EGR Delete Kit Replaces Stock Model.*
- *Designed to completely replace your diesel engine's stock EGR system, this kit can be installed in just 6-8 hours. Available for a 2007-1/2, 2008, and 2008 Dodge Ram Cummins 6.7L diesel engine. Pick up one today.*

Furthermore, Freedom Performance knew or should have known that these products were offered for sale or installed on "motor vehicles" or "motor vehicle engines." Many products were designed and marketed for use on a specific make, model, and year of Cummins, FCA, GM, or Ford motor vehicle or engine.¹³ Cummins, FCA, GM, or Ford sought and obtained COCs from the EPA for these motor vehicles or engines. This certification unequivocally demonstrates that these vehicles and engines are "motor vehicles" and "motor vehicle engines."

Enforcement

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.¹⁴ Persons violating Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under Section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to \$3,750 for each violation that occurred prior to November 2, 2015, and up to \$4,454 for each violation that occurred on or after November 2, 2015.¹⁵

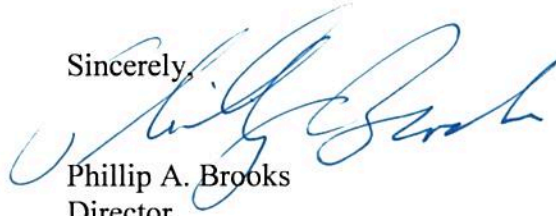
¹³ Cummins engines were used in Dodge brand motor vehicles manufactured by FCA.

¹⁴ CAA §§ 204, 205, 42 U.S.C. §§ 7523, 7524.

¹⁵ CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

The EPA is available to discuss this matter with you in further detail, upon your request. Please contact Mark J. Palermo, the EPA attorney assigned to this matter, within 14 days of receipt of this Notice of Violation. Mr. Palermo can be reached at (202) 564-8894 or Palermo.Mark@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip A. Brooks", is written over the word "Sincerely,".

Phillip A. Brooks

Director

Air Enforcement Division

Office of Civil Enforcement